DIVISION IV

ARKANSAS COURT OF APPEALS

NOT DESIGNATED FOR PUBLICATION

Sam Bird, Judge

CACR05-600

JANUARY 24, 2007

STEVEN SPARKS

APPELLANT

APPEAL FROM THE WASHINGTON

COUNTY CIRCUIT COURT

[NO. CR04-323-1]

V.

HON. WILLIAM A. STOREY, JUDGE

STATE OF ARKANSAS

APPELLEE

MOTION DENIED; REBRIEFING

ORDERED

Appellant Steven Sparks was convicted on three charges of rape and three charges of terroristic threatening after being tried by a jury on February 15, 2005. He was sentenced to consecutive terms of forty years for each rape and six years for each terroristic threatening, totaling 138 years' imprisonment in the Arkansas Department of Correction.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court, appellant's counsel has filed a motion to withdraw on the ground that the appeal is without merit. The motion is accompanied by a brief including both a discussion of matters in the record that might arguably support an appeal and a statement as to why counsel considers the points raised to be incapable of supporting a meritorious

appeal. Appellant has filed a pro se statement of points for reversal, and the State has filed a brief responding to his points.

Rule 4-3(j)(1) dictates the contents of a no-merit brief:

A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and Addendum. The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The abstract and Addendum of the brief shall contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the circuit court.

(Emphasis added.) As we have oftentimes stated, it is imperative that counsel follow the appropriate procedure when filing a motion to withdraw as counsel. *Walton v. State*, 94 Ark. App. 229, ___ S.W.3d ___ (2006). In furtherance of protecting the constitutional rights of an appellant, it is the duty of both counsel and this court to perform a full examination of the proceedings as a whole to determine if an appeal would be wholly frivolous. *Id*.

Appellant's counsel has listed in his brief eleven rulings by the trial court that were adverse to appellant, and counsel has explained why each ruling is not a meritorious ground for reversal. However, our review of the record reveals other rulings that counsel did not include in his brief even though they were adverse to appellant. We now direct counsel's attention to some of those rulings.

In at least four instances when the State objected that witnesses had previously answered questions asked by appellant's counsel, the trial court instructed counsel to "move ahead" or ruled that the witness had answered. The State raised hearsay and relevancy

objections to appellant's testimony that, in "one of the filthiest letters [he had] ever read," his ex-wife had lied; the court sustained the objection on both bases. When appellant's counsel asked him if his ex-wife's attitude against him had "something to do with" the complaint against him and the attitudes of the victims (her children), the court upheld the State's relevancy objection to his testimony about restraining orders, friction between the couple, and marital affairs. When counsel cross-examined the ex-wife, the court upheld the State's objections that the subjects of her baby-sitting business and appellant's contributions to the family income were outside the scope of cross-examination.

Without an adequate brief that contains an abstract of the record, we cannot make a reasoned decision regarding whether counsel is entitled to be relieved on the ground that the appeal is without merit. *Brady v. State*, 346 Ark. 298, 57 S.W.3d 691 (2001). We must order rebriefing in the present case because the brief submitted by appellant's counsel is inadequate. The rulings we have listed are merely examples of rulings that were adverse to appellant, and we do not intend that counsel should rely upon them as an exhaustive list. Nor do we express any opinion as to whether the new appeal should be on the merits or should be made pursuant to *Anders*, *supra*, and Ark. Sup. Ct. R. 4-3(j)(1).

Accordingly, counsel is directed to file a brief on the merits or one that complies with Ark. Sup. Ct. R. 4-3(j)(1). If a no-merit brief is filed, counsel's motion and brief will be forwarded by the Clerk to appellant so that, within thirty days, he again may raise any points

he chooses in accordance with Ark. Sup. Ct. R. 4-3(j)(2). Counsel's motion to withdraw is denied, and the case is remanded for rebriefing.

Motion denied; rebriefing ordered.

HART and GRIFFEN, JJ., agree.